

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
 Plaintiff,) 4:03CR3035
)
 V.)
)
ALFONZO CARRILLO,) **MEMORANDUM AND ORDER**
)
 Defendant.)
)

This matter is before the court on a notice of appeal filed by the defendant on February 17, 2009 ([filing 66](#)), and on a memorandum from the clerk of the court regarding the defendant's ability to proceed in forma pauperis on appeal ([filing 67](#)). The appeal concerns an order that was entered by this court on February 3, 2009 ([filing 65](#)), denying the defendant's "second motion for sentence modification pursuant to [18 U.S.C. § 3582\(c\)\(2\)](#)" ([filing 64](#)).

The defendant previously filed a motion for sentence reduction ([filing 57](#)) which was denied by the court on August 29, 2008 ([filing 58](#)). The defendant attempted to appeal from that order ([filing 59](#)), but the court dismissed the appeal as untimely on November 13, 2008 ([filing 62](#)). The subsequently filed "second motion for sentence modification" is duplicative of the defendant's original motion and is an apparent attempt to overcome the untimeliness of the defendant's initial notice of appeal. Therefore, the defendant's present appeal is not taken in good faith and the defendant is not permitted to proceed in forma pauperis.

Accordingly,

IT IS ORDERED that:

1. The defendant's notice of appeal ([filing 66](#)) is denied as the appeal is not taken in good faith;
2. The clerk of the court shall not process an appeal to the United States Court of Appeals for the Eighth Circuit on the basis of the aforesaid filing by the defendant;
3. The defendant is not permitted to proceed in forma pauperis on appeal;
4. The clerk of the court shall forward a copy of this memorandum and order to the Clerk of the United States Court of Appeals for the Eighth Circuit.

February 24, 2009.

BY THE COURT:
s/Richard G. Kopf
United States District Judge